IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 32225 of 2007(J)

PETITIONER:

BHARTI AIRTEL LTD. FORMERLY KNOWN AS
BHARTI TELE-VENTURES LIMITED, S.L.AVENUE,
N.H.BYPASS, KUNDANNUR, KOCHI REPRESENTED BY ITS
HEAD-LEGAL, SRI.P.JAYABAL MENON.

BY ADV. SRI.SANTHOSH MATHEW

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, LOCAL ADMINISTRATION
DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PANCHAYATS,
THIRUVANANTHAPURAM.

3. THE DIRECTOR OF MUNICIPALITIES,
THIRUVANANTHAPURAM.

BY SR.G.P.SRI.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 32225 of 2007

Dated this the 5th day of November , 2007

JUDGMENT

The petitioner is M/s. Bharti Airtel Limited, a company which has been granted licence by the Department of Telecommunication, Government of India for conducting Cellular Mobile operations in various states including Kerala. According to the petitioner, there is inordinate delay on the part of the local authorities within whose area telephone towers (base transmission stations) have been installed by the petitioner company in the matter of issuance of use certificates under Rule 142 of the Kerala Municipality Building Rules 1999 notwithstanding the submission of the completion certificates in Forms E and F.

2. Rule 22 of the Kerala Municipality Building Rules deals with completion certificate, development certificate and occupancy certificate as regards the ordinary constructions within areas where the Kerala Municipality Building Rules are applicable. Rule 22 (3) provides as follows:

> "22(3). The Secretary shall, on receipt of the completion certificate and on being satisfied

> that the construction or reconstruction or addition or alteration has been carried out in conformity with the permit given, issue occupancy certificate in the form in Appendix H (not later than fifteen days from the date of receipt of the completion certificates)
>
> Provided that if no such occupancy certificate is issued within the said fifteen days, the owner may proceed as if such occupancy certificate has been duly issued to him.
>
> (proviso is introduced into the rules by
>
> S.R.O.No.170/2001 w.e.f.22.2.2001)"

2. Rule 142 of the of the Kerala Municipality Building Rules deals with completion certificates in respect of telecommunications towers and in its present form was introduced into the Rules by the same SRO. Rule 142 is provides as follows:

> **"142 Completion Certificate:**-(1) After completion of the work of the telecommunication tower or pole structures and accessory rooms as per permit, the applicant and the engineer shall submit to the Secretary completion certificates as in Form E and F respectively along with a certificate of structural safety/ stability of the tower and the building, if the tower or pole is constructed over a building."
>
> (2). The Secretary, shall, if satisfied that the work has been completed as per permit, issue use certificate as in Appendix H allotting a number, included in a different series from the allotted to buildings, on the basis of which the authorities concerned may allow power connection, etc. for use of the service."

3. Non insistence of a time frame as in the case of Rule 22 (3) , according to the petitioner, is resulting in considerable hardship to the petitioner since there is inordinate delay on the part of the local authorities in issuing use certificates. Without use certificate from the local authority concerned, the petitioner and similar companies who are licencees of the Department of Telecommunication are being put to considerable inconveniences. Raising various grounds and enlisting as many as 422 local authorities with whom applications for use certificate are pending the petitioners pray for the following relief in this writ petition.

> i). Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to issue necessary instructions to the Secretaries of Panchayats/Municipalities/Corporations to issue use certificate under Rule 142 of the Kerala Municipality Building Rules 1999, within two weeks from the date of submission of Form E and Form F by the petitioner .

4. Even though notice was served on respondents 1,2 and 3 no counter affidavit has been filed. Heard Sri.Santhosh Mathew, the learned counsel for the petitioner and Sri.K.J.Muhammed Anzar, the learned Government who appeard for the respondents. Having

considered the grounds raised and having examined the statutory provisions, I am of the view that there is every justification for granting the relief sought for since in my opinion it was only by an oversight that time frame similar to the one which obtains in Rule 22 (3) has not been incorporated in Rule 142. The writ petition will stand allowed to the following extent.

Till such time as the Government amends Buildings Rules 142, so that the same will be inconformity with Rule 22 (3), there will be a direction to the respondents to issue necessary instructions to the Secretaries of the Municipalities, Panchayats and the Corporations in the State enlisted in the writ petition to issue use certificate under Rule 142 of the Kerala Municipalities Building Rules 1999 within 30 days of the date of submission of Forms E & F by the petitioner.

PIUS C. KURIAKOSE,

JUDGE.

Dpk